

AMAMGBO & ASSOCIATES  
DONALD AMAMGBO, ESQ.  
7901 Oakport Street, Suite 4900  
Oakland, CA 94621  
Telephone: 510-615-6000  
Facsimile: 510-615-6025

REGINALD TERRELL  
THE TERRELL LAW GROUP  
223 25<sup>th</sup> Street  
Richmond, CA 94804  
Telephone: 510-237-9700  
Facsimile: 510-237-4616  
Email: reggiet2@aol.com

Attorneys for Plaintiff  
Lisa Blackwell

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

LYNN BARTON, on behalf of herself and all  
others similarly situated

Plaintiffs,

—  
v.

FIDELITY NATIONAL FINANCIAL, INC.,  
et al.,

Defendants.

**This document relates to:**

Lisa Blackwell, on behalf of himself and all  
others similarly situated,

Plaintiff.

Plaintiff.

v.

FIDELITY NATIONAL FINANCIAL, INC.,  
et al.,

Defendants. \_\_\_\_\_

Case No.: C08-1341 JSW

**DECLARATION OF REGINALD  
TERRELL IN SUPPORT OF MOTION  
TO CONSIDER WHETHER CASES  
SHOULD BE RELATED**

Case No.: C08-cv-01928 MEJ

Defendants. \_\_\_\_\_

I, REGINALD TERRELL, declare as follows:

1. I am the principal of the Terrell Law Group and am a member in good standing of the State Bar of California. This Declaration is based on personal knowledge, except where specified that information is based on information and belief, and if called to testify, I could and would do so competently as to matters set forth herein. I am counsel for Plaintiff Lisa Blackwell in Blackwell v. Fidelity National Financial, Inc. et al., Case No. C08-01928 MEJ. I submit this Declaration in support of Plaintiff Lisa Blackwell's administrative Motion to Consider Whether Cases Should Be Related.

2. Attached as Exhibit A is a true and correct copy of the class action complaint filed on March 10, 2008 in Barton v. Fidelity National Financial, Inc., et al., Case No. C08-01341 JSW.

3. Attached as Exhibit A is a true and correct copy of the class action complaint filed on April 11, 2008 Blackwell v. Fidelity National Financial, Inc. et al., Case No. C08-01928 MEJ.

4. The defendants that have been named herein have not yet appeared in this action. Civil Local Rule 3-12 requires that an Administrative Motion to Consider Whether Cases Should Be Related be promptly filed. Accordingly, and as the Defendants are in the process of being served, a stipulation could not be obtained prior to filing Plaintiff's Administrative Motion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this 25<sup>th</sup> day of July, 2008 at Richmond, Contra Costa County, California.

  
REGINALD TERRELL

**EXHIBIT A**

1 Reed R. Kathrein (139304)  
 2 Jeff D. Friedman (173886)  
 3 HAGENS BERMAN SOBOL SHAPIRO LLP  
 4 715 Hearst Avenue, Suite 202  
 5 Berkeley, CA 94710  
 6 Telephone: (510) 725-3000  
 7 Facsimile: (510) 725-3001  
 8 reed@hbsslaw.com  
 9 jeff@hbsslaw.com

10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 LYNN BARTON, on behalf of herself and all  
 14 others similarly situated,

15 Plaintiff,

16 v.

17 FIDELITY NATIONAL FINANCIAL, INC.,  
 18 FIDELITY NATIONAL TITLE INSURANCE  
 19 COMPANY, TICOR TITLE INSURANCE  
 20 COMPANY, TICOR TITLE INSURANCE  
 21 COMPANY OF FLORIDA, CHICAGO TITLE  
 22 INSURANCE COMPANY, NATIONAL TITLE  
 23 INSURANCE OF NEW YORK, INC.,  
 24 SECURITY UNION TITLE INSURANCE  
 25 COMPANY, THE FIRST AMERICAN  
 26 CORPORATION, FIRST AMERICAN TITLE  
 27 INSURANCE COMPANY, UNITED  
 28 GENERAL TITLE INSURANCE COMPANY,  
 LANDAMERICA FINANCIAL GROUP, INC.,  
 COMMONWEALTH LAND TITLE  
 INSURANCE COMPANY, LAWYERS TITLE  
 INSURANCE CORPORATION,  
 TRANSNATION TITLE INSURANCE  
 COMPANY, STEWART TITLE GUARANTY  
 COMPANY and STEWART TITLE  
 INSURANCE COMPANY

Defendants.

08 1341 EDL  
 CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

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1 Plaintiff, Lynn Barton, by her attorneys, on behalf of herself and all others similarly  
2 situated, brings this action for treble damages and injunctive relief under the antitrust laws of the  
3 United States and based on statutes of the State of California against the above named defendants,  
4 demand a trial by jury, and complaining and alleging as follows:

5 I. INTRODUCTION

6 1. From the consumer's point of view, title insurance differs greatly from other, more  
7 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies  
8 protect consumer from an event that may occur in the future, title insurance offers protection from  
9 events that might have occurred in the past.

10 2. Most simply, title insurance is protection purchased against a loss arising from  
11 problems that occurred in the past and may affect the title to the real estate that a consumer is  
12 buying. Title insurers do not compete on the basis of the policies or coverage that they provide. In  
13 fact, almost all title policies are based on a single set of form policies published and maintained by  
14 the national trade association, the American Land Title Association. Furthermore, the end goal of  
15 an exhaustive title search by a title insurer is not to provide coverage for title defects that the search  
16 uncovers, but rather to exclude coverage for any such defects and therefore, further reduce the real  
17 value of the title policy which is written to cover only unknown defects in title at the time of  
18 issuance. As a result, title insurance is a commodity product.

19 3. Even for the savviest of insurance consumers, the purchase of a title insurance  
20 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of  
21 paperwork and signings that culminate in the closing of a home purchase. Consumers who  
22 normally shop around for their insurance and carefully compare prices, typically emerge from the  
23 closing on their new home holding an insurance policy that they know virtually nothing about and  
24 that in all likelihood, they will never need.

25 4. The title insurance market in California consists of a dozen carriers, ranging in size  
26 from regional companies to national affiliates. However, the market is dominated by four groups  
27 of affiliated companies which, combined, sell over 90 percent of the title insurance policies sold in  
28

1 California and which own and control the title plants in many California counties that every title  
2 insurer must rely on in order issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other traditional  
4 insurance carriers, choose not to market their products directly to the consumers who pay for them.  
5 Instead, the title insurance industry operates on what is termed a "reverse competition" model.  
6 Reverse competition means that title companies solicit business referrals from the other major  
7 players in the home purchase scenario – real estate agents and agencies, banks, lenders, builders,  
8 developers and others: middlemen or go-betweens. The title companies pay middlemen for these  
9 referrals in the form of direct payments, advertising expenses, junkets, parties and other kick-backs  
10 and inducements. In addition, middlemen such as Windermere, John L. Scott and Caldwell  
11 Banker-Bain, who themselves control a significant portion of the real estate brokerage market, take  
12 significant ownership stakes in local title agents and affiliates of the major title insurers and  
13 thereby get a direct return in profit from the referral of title business to the title agent whom they  
14 partly or wholly own.

15 6. Reverse competition, as the term suggests, isn't a model that benefits consumers  
16 through market-driven forces. In fact, consumers are bypassed completely as title companies  
17 spend nearly all of their marketing budgets "winning and dining" real estate agents, banks, lenders,  
18 builders, developers and others in an effort to convince these middlemen to steer their home-  
19 buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers  
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance  
22 authority. The rates are not subject to any meaningful review or regulation. The companies agree  
23 to fix the price of title insurance far in excess of the risk and loss experience associated with such  
24 insurance. As a result of the joint agreement as to rates, competition is relegated to the middleman.  
25 As a result of their joint rate setting and agreement, no company competes on price to the  
26 consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the companies  
28 agreed to not compete based on price to the consumer in other states, including California, where



1 regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive  
2 prices and to compete based on offering inducements to middlemen. In California, in three  
3 successive reports, the Office of the Insurance Commissioner ("OIC") has found an "astonishing  
4 number" of such inducements that are in violation of state law. However, the OIC does not  
5 actively oversee or regulate rates, and, in fact, does not by its own admission have the power to do  
6 so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their  
8 agents divide the market of real-estate middlemen through the use of Affiliated Business  
9 Arrangements ("ABAs"), wherein the dominant real estate brokers purchase significant ownership  
10 stakes in favored title insurance affiliates. The real estate brokers then reward their associates for  
11 using the preferred title insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiff, on behalf of a Class of those purchasing title insurance in  
13 California, seek damages arising from defendants' violations of the Sherman Act as well as  
14 California statutory law.

## 15 II. JURISDICTION AND VENUE

16 11. This Complaint is filed and these proceedings are instituted under Sections 4 and 16  
17 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to obtain  
18 injunctive relief and to recover treble damages and the costs of suit, including a reasonable  
19 attorneys' fee, against defendants for the injuries sustained by plaintiff and the members of the  
20 Class which she represents by reason of defendants' and their co-conspirators' violations, as  
21 hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1).

22 12. Defendants transact business, maintain offices or are found within the Northern  
23 District of California. The interstate commerce described hereinafter is carried on, in part, within  
24 the Northern District of California and the conspiratorial acts herein alleged were carried on, in  
25 part, in the Northern District of California.

26 13. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of  
27 this Court is appropriate because a substantial part of the events or omissions which give rise to the  
28



1 claim occurred in the county of San Francisco. Pursuant to Northern District of California, Local  
2 Rule 3-2(d), assignment to either the San Francisco Division or the Oakland Division is proper.

3 **III. PARTIES**

4 **A. Plaintiff**

5 14. Plaintiff, Lynn Barton, is an individual residing in San Francisco County,  
6 California. During the Class Period, plaintiff purchased title insurance directly from one or more  
7 of the defendants herein and has been injured by reason of the antitrust violations alleged.

8 **B. Defendants**

9 15. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware  
10 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National  
11 does business in California through one or more of its subsidiaries, including but not limited to,  
12 defendants Fidelity National Title Insurance Company, Ticor Title Insurance Company, Ticor Title  
13 Insurance Company of Florida, National Title Insurance of New York, Inc., Security Union Title  
14 Insurance Company, and Chicago Title Insurance Company. Fidelity National is registered to do  
15 business in California.

16 16. Defendant Fidelity National Title Insurance Company ("FNTIC") is a California  
17 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
18 FNTIC does business in California, is a licensed title insurance company in California and is  
19 registered to do business in California.

20 17. Defendant Ticor Title Insurance Company ("Ticor") is a California Corporation  
21 with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor does  
22 business in California, is a licensed title insurance company in California and is registered to do  
23 business in California.

24 18. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a Florida  
25 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
26 TTICF does business in California, is a licensed title insurance company in California and is  
27 registered to do business in California.

28

1           19. Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri  
2 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
3 Chicago Title does business in California, is a licensed title insurance company in California and is  
4 registered to do business in California.

5           20. Defendant National Title Insurance of New York, Inc. ("NTINY") is a New York  
6 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
7 NTINY does business in California, is a licensed title insurance company in California and is  
8 registered to do business in California.

9           21. Defendant Security Union Title Insurance Company ("SUTIC") is a California  
10 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
11 SUTIC does business in California, is a licensed title insurance company in California and is  
12 registered to do business in California.

13           22. The Fidelity family of title insurance companies (collectively, "Fidelity") – which  
14 includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and SUTIC,  
15 and their affiliates – is engaged in selling title insurance to purchasers of commercial and  
16 residential real estate throughout the United States, including California. Nationally, Fidelity  
17 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly  
18 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below)  
19 and since TIRSA's inception have charged title insurance rates in New York that TIRSA  
20 collectively sets.

21           23. The Fidelity family of title insurance companies and their affiliates are wholly-  
22 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,  
23 Fidelity National is a provider of title insurance, specialty insurance, and claims management  
24 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of title  
25 insurance companies engaged in the conduct challenged herein with the approval and assent of  
26 defendant Fidelity National.

1           24. Defendant The First American Corporation ("First American") is a California  
2 corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana, California 92707. First  
3 American does business in California through one or more of its subsidiaries, including but not  
4 limited to, defendants First American Title Insurance Company and United General Title Insurance  
5 Company.  
6

7           25. Defendant First American Title Insurance Company ("FATIC") is a California  
8 corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana, California 92707. FATIC does  
9 business in California, is a licensed title insurance company in California and is registered to do  
10 business in California.

11           26. Defendant United General Title Insurance Company ("UGTIC") is a Colorado  
12 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does  
13 business in California, is a licensed title insurance company in California and is registered to do  
14 business in California.

15           27. The First American family of title insurance companies (collectively, "First  
16 American") – which includes defendants First American, FATIC and UGTIC, and their affiliates –  
17 is engaged in selling title insurance to purchasers of commercial and residential real estate  
18 throughout the United States, including California. Nationally, First American accounts for  
19 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion. First  
20 American Title was a founding member of TIRSA and since TIRSA's inception has charged title  
21 insurance rates in New York that TIRSA collectively sets.  
22

23           28. The First American family of title insurance companies and their affiliates are  
24 wholly-owned and controlled by defendant The First American Corporation. Through its  
25 subsidiaries, First American is a provider of title insurance, business information, and related  
26 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First  
27  
28

1 American family of title insurance companies and their affiliates engaged in the conduct  
2 challenged herein with the approval and assent of defendant First American.

3 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia  
4 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does  
5 business in California through one or more of its subsidiaries, including but not limited to,  
6 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation  
7 and Transnation Title Insurance Company.

8 30. Defendant Commonwealth Land Title Insurance Company ("CLTIC") is a  
9 Pennsylvania corporation with its principle place of business at 5600 Cox Road, Glen Allen,  
10 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in  
11 California and is registered to do business in California.

12 31. Defendant Lawyers Title Insurance Corporation ("LTIC") is a Nebraska corporation  
13 with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060. LTIC does  
14 business in California, is a licensed title insurance company in California and is registered to do  
15 business in California.

16 32. Defendant Transnation Title Insurance Company ("TNTIC") is a Nebraska  
17 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
18 TNTIC does business in California, is a licensed title insurance company in California and is  
19 registered to do business in California.

20 33. The LandAmerica family of title insurance companies (collectively,  
21 "LandAmerica") – which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their  
22 affiliates – is engaged in selling title insurance to purchasers of commercial and residential real  
23 estate throughout the United States, including California. Nationally, LandAmerica accounts for  
24 approximately 19 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion.  
25 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA's  
26 inception have charged title insurance rates in New York that TIRSA collectively sets.

27 34. The LandAmerica family of title insurance companies and their affiliates are  
28 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its

1 subsidiaries, LandAmerica is a provider of title insurance and other products and services that  
2 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.  
3 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title insurance  
4 companies and their affiliates engaged in the conduct challenged herein with the approval of  
5 defendant LandAmerica.

6 35. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation  
7 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in  
8 California, is a licensed title insurance company in California and is registered to do business in  
9 California.

10 36. Defendant Stewart Title Insurance Company ("STIC") is a New York corporation  
11 with its principle place of business at 300 E. 42<sup>nd</sup> St., Floor 10, New York, NY 10017. STIC does  
12 business in California, is a licensed title insurance company in California and is registered to do  
13 business in California.

14 37. The Stewart family of title insurance companies (collectively, "Stewart") – which  
15 includes defendants STGC and STIC, and its affiliates – is engaged in selling title insurance to  
16 purchasers of commercial and residential real estate throughout the United States and California.  
17 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006  
18 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA's  
19 inception has charged title insurance rates in New York that TIRSA collectively sets.

20 38. Together, defendants account for more than 85 percent of the title premiums  
21 consumers pay in California. Nationally, they account for more than 85 percent of title premiums,  
22 which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages period,  
23 defendants charged California consumers in California virtually identical title insurance rates.

#### 24 IV. OTHER ENTITIES

25 39. TIRSA is a voluntary association of title insurers licensed as a rate service  
26 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains its  
27 offices in New York City, which until recently were located at the same New York address of  
28 Fidelity Title.



1           40.     TIRSA annually compiles from its members statistical data relating to their title  
2     insurance premiums, losses and expenses and submits this information in aggregate form to the  
3     New York Insurance Department. TIRSA also prepares and submits the New York Title Insurance  
4     Rate Manual which sets forth title rates to be charged and rules to be followed by TIRSA's  
5     members. The Insurance Department has never objected to any of the rates TIRSA has collectively  
6     set. Similarly, the California OIC has not actually held a public hearing or conducted any other  
7     review or regulation of the title insurance rates in California for thirty years.

8           41.     TIRSA's membership is comprised of defendant insurers and all other title insurers  
9     that are licensed to issue policies in New York. Currently, Fidelity, First American, LandAmerica,  
10    and Stewart collectively represent 14 of TIRSA's 22 members. As such, they comprise a majority  
11    voting block which, according to TIRSA's by-laws, allows them to control the operations of  
12    TIRSA and, in particular, TIRSA's collective rate setting activity.

13          42.     Various other persons, firms and corporations not made defendants herein have  
14    participated as co-conspirators with the defendants in the violations alleged herein and have  
15    performed acts and made statements in furtherance thereof.

#### 16                               V.     CLASS ACTION ALLEGATIONS

17          43.     Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the  
18    Federal Rules of Civil Procedure, on behalf of herself and a Class consisting of all persons  
19    excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who  
20    purchased directly, from one or more of the defendants and/or their co-conspirators title insurance  
21    for residential and commercial property in California during the four year period preceding this  
22    lawsuit and who have sustained damages as a result of the conspiracy herein alleged. The number  
23    of potential Class members is so numerous that joinder is impracticable.

24          44.     Plaintiff, as representative of the Class, will fairly and adequately protect the interest  
25    of the Class members. The interests of plaintiff are coincident with, and not antagonistic to, those  
26    of the Class members.

27          45.     Except as to the amount of damages each member of the Class has by itself  
28    sustained, all other questions of fact and law are common to the Class, including but not limited to,

1 the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman Act  
2 (15 U.S.C. § 1) and the effects of such violation.

3 46. Plaintiff, along with all other members of the Rule (b)(3) Class, were injured as a  
4 result of paying supracompetitive prices for title insurance in California. These supracompetitive  
5 prices were achieved as a result of defendants' illegal price-fixing activities and market allocation  
6 and division.

7 47. Members of the Class include hundreds of thousands, if not millions, of consumers.  
8 They are so numerous that their joinder would be impracticable.

9 48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal  
10 Rules of Civil Procedure, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule  
11 (b)(2) Class includes all members of the (b)(3) Class, and all consumers who are threatened with  
12 injury by the anticompetitive conduct detailed herein.

13 49. Defendants have acted, continued to act, refused to act and continued to refuse to act  
14 on grounds generally applicable to the Rule (b)(2) Class, thereby making appropriate final  
15 injunctive relief with respect to the Rule (b)(2) Class as a whole.

16 50. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions, of  
17 consumers. They are so numerous that their joinder would be impracticable.

18 51. Common questions of law and fact exist with respect to all Class members and  
19 predominate over any questions solely affecting individual Class members. Among the questions  
20 of law or fact common to the class are the following:

- 21 • Whether defendants have engaged in the alleged illegal price-fixing activity  
22 and market allocation and division.
- 23 • The duration and scope of defendants' alleged illegal price-fixing and market  
24 allocation and division activity.
- 25 • Whether defendants' alleged illegal price-fixing and market allocation and  
26 division has caused higher prices to plaintiffs and other purchasers of title  
27 insurance in California.
- 28 • Whether the Insurance Commissioner has actively supervised defendants'  
price fixing and market allocation and division.



1           52. Plaintiff does not have any conflict of interest with other Class members. Plaintiff's  
2 claims are typical of the claims of the Class and they will fairly and adequately reflect the interests  
3 of the Class. Counsel competent and experienced in federal class action and federal antitrust  
4 litigation has been retained to represent the Class.

5           53. This action is superior to any other method for the fair and efficient adjudication of  
6 this legal dispute since joinder of all members is not only impracticable, but impossible. The  
7 damages suffered by certain members of the Class are small in relation to the expense and burden  
8 of individual litigation and therefore it is highly impractical for such Class members to seek redress  
9 for damages resulting from defendants' anticompetitive conduct.

10           54. There will be no extraordinary difficulty in the management of the Class action.

#### 11                                   VI. TRADE AND COMMERCE

12           55. During all or part of the period in suit, defendants and their co-conspirators were  
13 sellers of title insurance in California.

14           56. During the period in suit, the defendants sold substantial quantities of title insurance  
15 in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in the United  
16 States paid \$17 billion for residential title insurance policies.

17           57. During the period in suit, Class members from locations outside California  
18 purchased commercial or residential property and title insurance within California.

19           58. During the period in suit, the defendants were the major sellers of title insurance in  
20 the United States and California. Defendants controlled in excess of 85 percent of the market for  
21 title insurance in the United States and California.

22           59. The activities of the defendants and their co-conspirators, as described herein, were  
23 within the flow of interstate commerce and substantially affected interstate commerce.

#### 24                                   VII. FACTUAL ALLEGATIONS

##### 25           A. The Nature of Title Insurance

26           60. Title insurance is one of most costly items associated with the closing of a real  
27 estate transaction. In California, rates for title insurance are based on a percentage of the total  
28 value of the property being insured. For residential properties, this price ranged in 2005 from

1 about \$1,010 (for a \$250,000.00) property to \$1,490 (for a \$500,000 property). For more  
2 expensive homes and commercial properties, these prices are significantly higher. This amount  
3 spent on title insurance has risen dramatically over the past decade.

4 61. Title insurance serves an important purpose. It protects the purchaser of a property  
5 from any unidentified defects in the title that would in any way interfere with the full and complete  
6 ownership and use of the property with the ultimate right to resell the property. Title insurance is  
7 required by lenders in most residential and commercial real estate transactions.

8 62. Consumers exercise little discretion in choosing the title insurer from which they  
9 purchase the insurance. That decision is typically made for them by their lawyer, mortgage broker,  
10 lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not challenged.  
11 Most consumers do not even become aware of the price they will pay and to which insurer they  
12 will pay it until the actual closing of the real estate transaction. By then it's too late, consumers  
13 can't attempt to negotiate a better title insurance price or alternate provider for fear of delaying or  
14 derailing the entire transaction. There is no shopping around. There is no negotiation of price.

15 63. This dynamic basically removes the sale of title insurance from the normal  
16 competitive process. Unlike the regular forces of supply and demand that keep most industries and  
17 their pricing in check, the title insurance industry is not subject to any real competitive constraints.  
18 The purchasers of the insurance, in most instances, are not the ones making the purchasing  
19 decisions. And, they are certainly in no position to question the price.

20 64. The most effective but illegal way for a particular title insurer to get business is to  
21 encourage those making the purchasing decisions – the real-estate middlemen – to steer business to  
22 that insurer. The best way to so motivate the middlemen is not through lower prices (that they are  
23 not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals, business  
24 services and other financial enticements. Therefore, it is through higher pricing (which allows for  
25 generous inducements and kick-backs), not lower pricing, that provides the best way for title  
26 insurers to compete and increase their business.

1     **B. Price-Fixing in the Large Markets**

2           65. New York is one of several states in which the leading title insurers collectively fix  
3 their prices through a rate-setting organization like TIRSA. There are two principal cost  
4 components that go into TIRSA's calculation. One comprises the risk associated with issuing the  
5 title policy. The other comprises the "agency commissions" paid to title agents.

6           66. The risk component covers the risk the title insurer bears for any undiscovered  
7 defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of  
8 loss to the insurer. That is because title insurance protects against unknown *prior* events that cause  
9 defects in title. With a proper search and examination of prior ownership records, any such defects  
10 can and almost always are readily identified and excluded from the policy's coverage.

11 Consequently, the average claim payout on a title insurance policy in the United States amounts to  
12 only about 5 percent of the total premium collected. This is very different from property coverage  
13 (such as auto and home insurance) – which protects against *future* occurrences over which the  
14 insurer has little to no control – where the average claim payout amounts to about 80 percent of the  
15 total premium.

16           67. The "agency commissions" component of the title insurance rate covers payments  
17 made to title agents. Defendants have an ownership or management stake in many of the title  
18 agencies to which these payments are made. A small portion of these payments is for the search  
19 and exam of prior ownership records of the property being purchased to identify any liens,  
20 encumbrances, burdens, exclusions, or other defects in the title. The search and exam function  
21 does not involve the spreading or underwriting of risk, and title insurers typically outsource this  
22 task to title agents.

23           68. The remainder, and by far the bulk, of the agency commissions are comprised of  
24 costs unrelated to the issuance of title insurance. These costs include kickbacks and other financial  
25 inducements title insurers provide to title agents and indirectly (through title agents) to the lawyers,  
26 brokers, and lenders who, in reality, are the ones deciding which title insurer to use. These  
27 payments have nothing to do with the issuance of title insurance and are made by title insurers  
28 merely to inflate their revenues and steer business their way.

1           69. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title  
2 insurance premium is based on the so-called "costs" associated with the payment of agency  
3 commissions. Only 15 percent is based on costs associated with the risk of loss.

4           70. TIRSA publishes its final calculated title rates in the New York Title Insurance Rate  
5 Manual. These rates are tied to the value of the property being insured. This is so despite the fact  
6 that the costs associated with agency commissions are entirely unrelated to the value of the  
7 property. Indeed, agency kickbacks and enticements have little to do with producing a particular  
8 title policy and provide no value – proportional to property value or otherwise – to the consumer.  
9 Even search and exam costs are unrelated to property value. They instead depend on the age of the  
10 property, the complexity of the ownership history, and the accessibility of prior ownership records.

11           71. There are other states in which the defendants overly meet and agree to fix the rates  
12 for title insurance as part of a formal collective rate setting process.

13 **C. TIRSA's Formation**

14           72. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU") served as  
15 the title insurance rate-setting body in New York. NYBTU, along with the title insurance rate  
16 setting bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal  
17 Trade Commission ("FTC") challenge to the collective rate setting activity of many of these  
18 associations. The FTC's challenge culminated in *FTC v. Tigor Title Ins. Co.*, 504 U.S. 621 (1992),  
19 where the Supreme Court held that to avoid *per se* illegal price fixing liability, the rate setting  
20 activity of these rating bureaus must be actively supervised by the state.

21           73. In *Tigor*, the FTC focused its challenge on agency commissions. The FTC  
22 contended that the respective state insurance departments merely rubber-stamped this portion of the  
23 collectively fixed rates without any independent review or analysis of their reasonableness or cost  
24 justification. The Supreme Court agreed with the FTC that this kind of limited state oversight was  
25 not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance department has to  
26 "exercise[] sufficient independent judgment and control so that the details of the rates or prices have  
27 been established as a product of deliberate state intervention, not simply by agreement among  
28 private parties." *Tigor*, 504 U.S. at 634-35.

1           74. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand in  
2     *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the  
3     collective rate-setting of certain state rating bureaus was improper because it was not actively  
4     supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed us  
5     that a state's rubber stamp is not enough. Active supervision requires the state regulatory  
6     authorities' independent review and approval." *Id.* at 1139.

7           75. Defendants formulated TIRSA's first rate manual and procedure soon after the  
8     Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme to  
9     get around the rigors of state oversight required by *Ticor*. They have done so by calculating a  
10    single rate that comprises both risk and agency commission costs and by outsourcing to title agents  
11    the agency commission costs. In this way, defendants avoid providing the Insurance Department  
12    with any detailed breakout or backup for the bulk of the costs that make up their collectively fixed  
13    rates.

14          76. TIRSA merely submits an aggregated figure that is supposed to represent the total  
15    agency commission costs. Embedded within this figure is the vast quantity of dollars that are  
16    funneled to and through the title agencies as kickbacks, financial inducements and other costs  
17    unrelated to the issuance of title insurance. Defendants' design in all of this has been to effective  
18    "hide" the cost basis for their artificially high and collectively fixed title insurance premiums from  
19    the regulatory scrutiny that *Ticor* demands.

20    **D. Lack of Regulatory Supervision and Authority in New York and Other States**  
21    **Including California**

22          77. There is no provision under the New York Insurance Law for TIRSA to include in  
23    its collectively fixed rates kickbacks and other agency commission payments unrelated to the  
24    issuance of title insurance. Indeed, the New York Insurance Department has openly acknowledged  
25    that it lacks the authority to review any agency commission payments. It has likewise recognized  
26    that defendants' outsourcing of agency commission costs has prevented it from performing a  
27    meaningful review of TIRSA's calculated rates. This was made clear at a November 2006 public  
28    hearing the New York Insurance Department held – the first in 15 years – where it questioned



1 TIRSA and its members on TIRSA's failure to provide the Insurance Department with any backup  
2 or detail for agency commissions.

3 78. At the hearing, the Insurance Department conceded that it could not properly  
4 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed cost  
5 information on agency commissions that TIRSA does not provide.

6 79. The Insurance Department's recognition that it is not properly supervising TIRSA's  
7 rate-setting activity is consistent with the April 2007 findings of the U.S. Government  
8 Accountability Office ("GAO") that the title insurance industry is in need of greater state  
9 regulation. The GAO studied the industry conditions of several states, including New York, and  
10 concluded that "state regulators have not collected the type of data, *primarily on title agents' costs*  
11 *and operations*, needed to analyze premium prices and underlying costs." (Emphasis added.)

12 80. Unchecked by regulatory review and insulated from competition, defendants have  
13 thus been able to collectively fix title insurance rates at supra competitive levels and earn profits  
14 that vastly exceed those contemplated by the Insurance Department or that would have resulted in a  
15 free and open competitive market.

16 81. At the time of TIRSA's formation, the Insurance Department established 5 percent  
17 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance  
18 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its  
19 revenue and cost information, to ensure that this 5 percent profit level is maintained and based on a  
20 reasonable premium. However, without the authority or ability to scrutinize agency commission  
21 costs, the Insurance Department has been unable to perform this function. As a result, defendants  
22 (through TIRSA) have been able to set artificially high title premiums and secure title profits far in  
23 excess of the 5 percent threshold.

24 82. Through an independent investigation conducted over the past several years, the  
25 New York State Attorney General found that for every dollar of insurance premium defendants  
26 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is paid  
27 out in claims. And, of the roughly 85 cents that supposedly covers agency commissions, only  
28 between 8 and 11 cents goes to costs actually incurred by title agents in producing the title policy.

1 These numbers show that title insurers' collectively fixed rates have resulted in profits that  
2 untethered to and vastly exceed the costs of producing such policies.

3 83. The New York Attorney General's investigation further revealed that what was  
4 largely driving these numbers were the kickbacks and other financial inducements defendants were  
5 funneling to and through title agents to secure more business. As reported at the New York  
6 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it spent  
7 more than \$1 million of these so-called "agency commissions" on items identified as "Christmas",  
8 "automobile expenses", "political contributions", "promotional expenses", and "travel and  
9 entertainment". These expenses are not even remotely related to the issuance of title insurance.

10 84. The Washington State Insurance Commissioner's October 2006 report found  
11 strikingly similar abuses in Washington. Violations were pervasive and the Commissioner  
12 concluded that consumers were paying too much as a result.

13 85. All of this "excess money" paid to title agents not only works to steer business to  
14 defendants. It also serves to boost defendants' own profits through the inflated revenues they  
15 obtain to cover these agency payments and through their ownership or management stake in many  
16 of these agencies.

17 86. Defendants are competitors in the sale of title insurance to consumers throughout  
18 the United States. These title insurers have agreed and engaged in concerted efforts to  
19 (i) collectively set and charge uniform and supracompetitive rates for title insurance, (ii) include in  
20 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,  
21 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these supposed  
22 "costs" from regulatory scrutiny by funneling them to and through title agents over which the  
23 government agencies have no ability or authority to regulate.

24 87. The GAO in its 2007 report entitled "Actions Needed to Improve Oversight of the  
25 Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of  
26 competition and questions about the reasonableness of prices including:  
27  
28



- Consumers find it difficult to shop for title insurance, therefore, they put little pressure on insurers and agents to compete based on price;
- Title agents do not market to consumers, who pay for title insurance, but to those in the position to refer consumers to particular title agents, thus creating potential conflicts of interest;
- A number of recent investigations by HUD and state regulatory officials have identified instances of alleged illegal activities with the title industry that appear to reduce price competition and could indicate excessive prices;
- As property values or loan amounts increase, prices paid for title insurance by consumers appear to increase faster than insurers' and agents' costs; and
- In states where agents' search and examination services are not included in the premium paid by consumers, it is not clear that additional amounts paid to title agents are fully supported by underlying costs.

88. The GAO visited several states, including California, and found a lack of regulatory oversight:

In the states we visited, we found that regulators did not assess title agents' costs to determine whether they were in line with premium rates; had made only limited efforts to oversee title agents (including ABAs involving insurers and agents); and, until recently, had taken few actions against alleged violations of antikickback laws. In part, this situation has resulted from a lack of resources and limited coordination among different regulators within states. On the federal level, authority for alleged violations of section 8 of RESPA, including those involving increasingly complex ABAs, is limited to seeking injunctive relief. Some state regulators expressed frustration with HUD's level of responsiveness to their requests for help with enforcement, and some industry officials said that RESPA rules regarding ABAs and referral fees need to be clarified. Industry and government stakeholders have proposed several regulatory changes, including RESPA reform, strengthened regulation of agents, a competitor right of action with no monetary penalty, and alternative title insurance models. [*Id.* at 41; footnotes omitted.]

1 **E. Competition Based on Kickbacks and Inducements But Not Rates**

2 89. Having agreed to fix or stabilize prices in New York and other states where they  
3 overtly meet to promulgate rates, these same defendants then set out to do the same in other states.

4 90. In other words, as a direct result of these meetings where rates were agreed to, these  
5 same defendants agreed, either expressly or tacitly, to not compete on rates in other states as well.  
6 To compete on rates in other states could and would imperil their ability to maintain the agreed rate  
7 in states like New York.

8 91. As is the case in New York, a lack of regulatory authority over rates created an  
9 environment in which a conspiracy can and did succeed. No agency was examining why all the  
10 rates were virtually identical, and no agency was examining whether the costs associated with these  
11 premiums were reasonable. This is an environment which is conducive to price fixing.

12 92. In California, there is a lack of regulatory authority and oversight over title  
13 insurance companies. The rates in California are not set as part of a deliberate state intervention  
14 and the state does not and cannot meaningfully renew or approve these rates. The rates at issue in  
15 this case went into effect without review.

16 **F. Other Indicators of a Lack of Competition and Conditions Conducive to Collusive**  
17 **Rate Setting**

18 93. In addition to the uniformity of rates, other facts suggest that it is more plausible  
19 than not that rates have been set based on an agreement to fix prices.

20 94. In theory, the chain of title should be documented back to its historic grant of  
21 ownership centuries in the past. Fear about a possible title defect in the distant past is widely used  
22 as a justification by title agencies when convincing property buyers to purchase an owner policy in  
23 addition to the lender policy, which is mandatory to secure a mortgage. The title agency, however,  
24 saves much time and money when the search is limited to one or two transactions. They rely on  
25 the insurance policy to cover the remote chance of missing an earlier but still-valid claim. If such a  
26 claim is asserted and survives the scrutiny of the title insurance company's legal department, the  
27 expected cost of compensation is likely to be less than the sum of added overhead costs of  
28 routinely tracing back every chain of title to the earliest registered owner in the distant past.

1           95. Title insurance industry officials tend to justify the large proportion of the premium  
2 retained by the title abstract and settlement agency (from 60 to more than 90 percent) by the  
3 alleged high cost of title searching back into the distant past. In fact, a high proportion of  
4 noncommercial properties are searched only through the most recent transaction. No information  
5 is available as to what proportion of claims originate in the distant past. The industry has never  
6 published pertinent statistics. It would have a marketing incentive to publish these statistics if the  
7 risk were significant; that it has not published these statistics indicates that the risk probably is only  
8 slightly greater than zero.

9           96. Many U.S. homes are being resold three or four times in twenty-five years. At each  
10 of these occasions, an abstract of title will be prepared on the basis of a more or less thorough  
11 review of the available title records, inheritance records, family records and records of past or  
12 current liens against a property. It is reasonable, therefore, to suspect that the risk of a title defect  
13 will decrease every time a property is sold.

14           97. Title searches have become less labor intensive, especially in large urban counties  
15 and cities. More and more of the information is available online. The statistical likelihood that a  
16 title default would be overlooked is a closely held industry secret, but it appears to be so small that  
17 many transactions are now insured on the basis of a search of the last owner's title history or a  
18 search into transactions that occurred during the last twenty-five to thirty-five years. The evidence  
19 is strong that the title insurance industry has achieved a remarkably high level of loss minimization.

20           98. Thus the costs of production have decreased as has the risk of loss yet none of these  
21 factors has resulted in price competition at the consumer level.

22           99. There is a remarkable absence of rate changes by title insurers over the past five  
23 years, despite declining costs of production, increased number of transactions and increased  
24 revenue per transaction. During a period when costs per unit of production declined significantly,  
25 underwritten title companies and title insurers maintained excessive rates. The prices charged by  
26 title insurers and underwritten title companies were not and are not responsive to the changing  
27 costs of production or increasing revenue per transaction at a given set of rates. Again, this is  
28 indicia of an agreement not to compete based on price.

1           100. As noted, the title companies engage in illegal rebates and kickbacks where the title  
2 insurer or the underwritten title company provides money, free services or other things of value to  
3 a real estate agent, a lender or homebuilder in exchange for business referrals. These illegal rebates  
4 and kickbacks – a consequence of reverse competition – show that title insurance rates are supra  
5 competitive and that some portion of the overcharge is passed from the underwritten title company  
6 or title insurer to the referrer of business.

7           101. A lack of competition and the ability to control prices is enhanced by the fact that  
8 there were few title insurer entrants over the period from 1995 through 2005 and the number of  
9 title insurer groups declined as title insurers acquired other title insurers. There were few  
10 underwritten title company entrants over the 2000 to 2005 period and new entrants were controlled  
11 business arrangements whose addition to the market did not result in greater price competition.

12           102. Access to title plants can be a barrier to entry, but a large barrier to entry exists due  
13 to the established relationships between the entities that can steer the consumer's title and escrow  
14 business and the entities who sell title insurance and escrow services.

15           103. The title insurance market is highly concentrated – a few title insurers account for  
16 the vast majority of title insurance sales – at both the statewide level and at the county level in  
17 California. For example, three title insurer groups account for 77.4% of the market at a statewide  
18 level. At the county level, each individual market was highly concentrated. The GAO found that  
19 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the  
20 ability of companies to fix prices

21           104. The agreement not to compete based on price is also evidenced by the fact that no  
22 company has marketed its services to consumers, the ultimate purchasers of the product. This is in  
23 marked contrast to real insurance, for example, car insurance, where the companies compete  
24 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor," or  
25 Allstate's "good hands," or the cute (to some) GEICO gecko promising low prices.

**VIII. CLAIMS FOR RELIEF**

**COUNT I**

**Violation of the Sherman Act**

105. Plaintiff incorporates by reference the preceding allegations.

106. Beginning at least as early as February 2004, and continuing thereafter to the present, the exact dates being unknown to plaintiff, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

107. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial terms of which have been:

(a) to fix, raise, maintain and stabilize the price of title insurance throughout California;

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in California; and

(c) to allocate and divide the market for title insurance in California.

108. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California and is a *per se* violation of Section I of the Sherman Act.

109. Defendants' price-fixing, market allocation and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

110. Through their collective price-fixing, market allocation and division and manipulation of the regulatory process, defendants have harmed competition by charging consumers supra competitive prices for title insurance in California, evidenced in part by the fact that the prices are uniformly higher than compared with the cost of providing the insurance.

111. The aforesaid combination and conspiracy has had the following effects among others:

(a) price competition in the sale of title insurance has been suppressed, restrained and eliminated;

(b) prices for title insurance have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and

(c) purchasers of title insurance have been deprived of the benefit of free and open competition.

112. During the period of the antitrust violations by defendants and their co-conspirators, plaintiff and each member of the Class she represents, has purchased title insurance and, by reason of the antitrust violations herein alleged, paid more for such that it would have paid in the absence of said antitrust violations. As a result, plaintiff and each member of the Class she represents, has been injured and damaged in an amount presently undetermined.

## COUNT II

### Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.*

113. Plaintiff incorporates by reference the preceding allegations.

114. Defendants conduct as set forth above is in violation of the Cartwright Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

115. As a direct result of defendants' unlawful acts plaintiffs have paid artificially inflated prices for title insurance and have suffered injury to their business and property.

## COUNT III

### (California's Business & Professions Code §§ 17200, *et seq.*)

116. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of herself and the members of the Class.

117. Defendants' statements and representations constitute unfair, unlawful and deceptive trade practices in violation of the UCL.



1 118. All of the wrongful conduct alleged herein occurs and continues to occur in the  
2 conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or generalized  
3 course of conduct that is repeated in the State of California on hundreds, if not thousands, of  
4 occasions daily.

5 119. Plaintiff has suffered injury in fact and has lost money or property as a result of  
6 defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title insurance  
7 then she would or should have absent the conduct complained of.

8 120. Plaintiff requests that this Court enter such orders or judgment as may be necessary  
9 to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to restore  
10 to any person in interest any money which may have been acquired by means of such unfair  
11 competition and to disgorge any profits realized by defendants as a result of its unfair, unlawful  
12 and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code  
13 § 3345, and for such other relief as set forth in the Prayer for Relief.

14 **COUNT IV**

15 **UNJUST ENRICHMENT**

16 121. Plaintiff incorporates by reference the preceding allegations.

17 122. This Cause of Action is pled in the alternative to all claims and/or causes of action  
18 at law.

19 123. Defendant has received a benefit from plaintiff and the Class members in the form  
20 of the prices plaintiff and the Class members paid for defendants' title insurance.

21 124. Defendants are aware of their receipt of the above-described benefit.

22 125. Defendants received the above-described benefit to the detriment of plaintiff and  
23 each of the other members of the Class.

24 126. Defendants continue to retain the above-described benefit to the detriment of  
25 plaintiff and the Class members.

26 127. As a result of defendants' unjust enrichment, plaintiff and the Class members have  
27 sustained damages in an amount to be determined at trial and seek full disgorgement and restitution  
28



1 of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or  
2 wrongful conduct alleged above.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff demands:

5 A. That the alleged combination and conspiracy among the defendants and their  
6 co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of  
7 Section 1 of the Sherman Act;

8 B. That the Court declare that the premiums charged are excessive under state law and  
9 order damages;

10 C. That judgment be entered against defendants, jointly and severally, and in favor of  
11 plaintiff, and each member of the Class it represents, for threefold the damages determined to have  
12 been sustained by plaintiff, and each member of the Class it represents, together with the cost of  
13 suit, including a reasonable attorneys' fee;

14 D. Each of the defendants, successors, assignees, subsidiaries and transferees, and their  
15 respective officers, directors, agents and employees, and all other persons acting or claiming to act  
16 on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any  
17 manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination,  
18 conspiracy, agreement, understanding or concert of action, adopting or following any practice,  
19 plan, program, or design having a similar purpose or effect in restraining competition; and

20 E. Such other and further relief as may appear necessary and appropriate.

21 **JURY TRIAL DEMANDED**

22 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged herein.

23 DATED: March 10, 2008.

24 HAGENS BERMAN SOBOL SHAPIRO LLP

25  
26 By 

27 JEFF D. FRIEDMAN (173886)  
28

1 Reed R. Kathrein (139304)  
2 715 Hearst Avenue, Suite 202  
3 Berkeley, CA 94710  
4 Telephone: (510) 725-3000  
5 Facsimile: (510) 725-3001  
6 jefff@hbsslaw.com  
7 reed@hbsslaw.com

8 Steve W. Berman  
9 Anthony D. Shapiro  
10 Thomas E. Loeser (202724)  
11 HAGENS BERMAN SOBOL SHAPIRO LLP  
12 1301 Fifth Avenue, Suite 2900  
13 Seattle, California 98101  
14 Telephone: (206) 623-7292  
15 Facsimile: (206) 623-0594  
16 steve@hbsslaw.com  
17 tony@hbsslaw.com  
18 toml@hbsslaw.com

19 Attorneys for Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT B**

**DONALD AMAMGBO**  
**123 OAKPORT, SUITE 4900**  
**OAKLAND, CA 94621**  
**TELEPHONE: 510 615 6000**  
**FACSIMILE: 510 615 6025**

**REGINALD TERRELL**  
**THE TERRELL LAW GROUP**  
**223 25TH STREET**  
**RICHMOND 94804**  
**TELEPHONE: 510 237 9700**  
**FACSIMILE: 510 237 4616**

**Attorneys for Plaintiff**

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

**LISA BLACKWELL, on Behalf of herself**  
**and All Others Similarly Situated,**

**Plaintiff,**

**vs.**

**FIDELITY NATIONAL FINANCIAL,**  
**INC., FIDELITY NATIONAL TITLE**  
**INSURANCE COMPANY, TICOR TITLE**  
**INSURANCE COMPANY, TICOR TITLE**  
**INSURANCE COMPANY OF FLORIDA,**  
**CHICAGO TITLE INSURANCE**  
**COMPANY, NATIONAL TITLE**  
**INSURANCE OF NEW YORK, INC.,**  
**SECURITY UNION TITLE INSURANCE**  
**COMPANY, THE FIRST AMERICAN**  
**CORPORATION, FIRST AMERICAN**  
**TITLE INSURANCE COMPANY,**  
**UNITED GENERAL TITLE INSURANCE**  
**COMPANY, LANDAMERICA**  
**FINANCIAL GROUP, INC.,**  
**COMMONWEALTH LAND TITLE**  
**INSURANCE COMPANY, LAWYERS**  
**TITLE INSURANCE CORPORATION,**  
**TRANSNATION TITLE INSURANCE**  
**COMPANY, STEWART TITLE**  
**GUARANTY COMPANY and STEWART**  
**TITLE INSURANCE COMPANY**

**No.**

**CIVIL - CLASS ACTION**

**JURY TRIAL DEMANDED**

**C08-01928**

**E-filing**

**ORIGINAL**  
**FILED**  
**APR 11 2008**  
**RICHARD W. WIERING**  
**CLERK, U.S. DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND**

**ADR**  
**MEJ**

**COMPLAINT**

1 Defendants

2 Plaintiff Lisa Blackwell, by her attorneys, on behalf of herself and all others similarly  
3 situated brings this action for treble damages and injunctive relief under the antitrust laws of the  
4 United States and based on statutes of the State of California against the above-named  
5 defendants, demand a trial by jury, and complaining and alleging as follows:

6 I. INTRODUCTION

7 1. From the consumer's point of view, title insurance differs greatly from other, more  
8 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies  
9 protect consumers from an event that may occur in the future, title insurance offers protection  
10 from events that might have occurred in the past.

11 2. Most simply, title insurance is protection purchased against a loss arising from  
12 problems that occurred in the past and may affect the title to the real estate that a consumer is  
13 buying. Title insurers do not compete on the basis of the policies or coverage that they provide.  
14 In fact, almost all title policies are based on a single set of form policies published and  
15 maintained by the national trade association, the American Land Title Association. Furthermore,  
16 the end goal of an exhaustive title search by a title insurer is not to provide coverage for title  
17 defects that the search uncovers, but rather to exclude coverage for any such defects and  
18 therefore, further reduce the real value of the title policy which is written to cover only unknown  
19 defects in title at the time of issuance. As a result, title insurance is a commodity product.

20 3. Even for the savviest of insurance consumers, the purchase of a title insurance  
21 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of  
22 paperwork and signings that culminate in the closing of a home purchase. Consumers, who  
23 normally show around for their insurance and carefully compare prices, typically emerge from  
24 the closing on their new home holding an insurance policy that they know virtually nothing about  
25 and that in all likelihood, they will never need.

26 4. The title insurance market in California consists of a dozen carriers, ranging in  
27 size from regional companies to national affiliates. However, the market is dominated by four  
28 groups of affiliated companies which, combined, sell over 90 percent of the title insurance

1 policies sold in California and which own and control the title plants in many California counties  
2 that every title insurer must rely on in order to issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other traditional  
4 insurance carriers, choose not to market their products directly to the consumers who pay for  
5 them. Instead, the title insurance industry operates on what is termed a "reverse competition"  
6 model. Reverse competition means that title companies solicit business referrals from the other  
7 major players in the home purchase scenario - real estate agents and agencies, banks, lenders,  
8 builders, developers and others: middlemen or go-betweens. The title companies pay middlemen  
9 for these referrals in the form of direct payments, advertising expenses, junkets, parties and other  
10 kick-backs and inducements. In addition, middlemen such as Windermere, John L. Scott and  
11 Caldwell Bank-Bain, who themselves control a significant portion of the real estate brokerage  
12 market, take significant ownership stakes in local title agents and affiliates of the major title  
13 insurers and thereby get a direct return in profit from the referral of title business to the title agent  
14 whom the partly or wholly own.

15 6. Reverse competition, as the term suggests, isn't a model that benefits consumers  
16 through market-driven forces. In fact, consumers are bypassed completely as title companies  
17 spend nearly all of their marketing budgets "winning and dining" real estate agents, banks, lenders,  
18 builders, developers and others in an effort to convince these middlemen to steer their home-  
19 buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers  
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance  
22 authority. The rates are not subject to any meaningful review of regulation. The companies  
23 agree to fix the price of title insurance far in excess of the risk and loss experience associated  
24 with such insurance. As a result of the joint agreement as to rates, competition is relegated to the  
25 middleman. As a result of their joint rate setting and agreement, no company competes on price  
26 to the consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the companies  
28 agreed to not compete based on price to the consumer in other states, including California, where

1 regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive  
2 prices and to compete based on offering inducements to middlemen. In California, in three  
3 successive reports, the Office of the Insurance Commissioner ("OIC") has found an "astonishing  
4 number" of such inducements that are in violation of state law. However, the OIC does not  
5 actively oversee or regulate rates, and, in fact, does not buy its own admission have the power to  
6 do so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their  
8 agents divide the market of real-estate middlemen through the use of Affiliated Business  
9 Arrangements ("ABAs"), wherein the dominant real estate brokers purchase significant  
10 ownership in favored title insurance affiliates. The real estate brokers then reward their  
11 associates for using the preferred title insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiff, on behalf of a class of those purchasing title insurance in  
13 California seek damages arising from defendants' violations of the Sherman Act as well as  
14 California statutory law.

## 15 II. JURISDICTION AND VENUE

16 11. This Complaint is filed and these proceedings are instituted under Section 4 and  
17 16 of the Act of Congress of October 15, 1914 C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to  
18 obtain injunctive relief and to recover treble damages and the costs of suit, including a reasonable  
19 attorneys' fee, against defendants for the injuries sustained by plaintiff and the members of the  
20 Class which she represents by reason of defendants' and their co-conspirators' violations, as  
21 hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

22 12. Defendants transact business, maintain offices or are found within the Northern  
23 District of California. The interstate commerce described hereinafter is carried on, in part, within  
24 the Northern District of California and the conspiratorial acts herein alleged were carried on, in  
25 part, in the Northern District of California.

26 13. Intra-district Assignment: Assignment to the San Francisco or Oakland division  
27 of this court is appropriate because a substantial part of the events or omission which give rise to  
28



1 the claim occurred in the county of San Francisco. Pursuant to Northern District of California,  
2 Local Rule 3-2(d), assignment to either the San Francisco Division or the Oakland Division is  
3 proper.

4 **III. PARTIES**

5 14. Plaintiff Lisa Blackwell, is an individual residing in San Francisco County,  
6 California. During the class period, plaintiff purchased title insurance directly from one or more  
7 of the defendants herein and has been injured by reason of the antitrust violations alleged.

8 15. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware  
9 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity  
10 National does business in California through one or more of its subsidiaries, including but not  
11 limited to defendants Fidelity National Title Insurance Company, Ticor Title Insurance  
12 Company, Ticor Title Insurance Company of Florida, National Title Insurance of New York,  
13 Inc., Security Union Title Insurance Company, and Chicago Title Insurance Company. Fidelity  
14 National is registered to do business in California.

15 16. Defendant Fidelity National Title Insurance Company ("FNTIC") is a California  
16 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida  
17 32204. FNTIC does business in California, is a licensed title insurance company in California  
18 and is registered to do business in California.

19 17. Defendant Ticor Title Insurance Company ("Ticor") is a California Corporation  
20 with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor  
21 does business in California, is a licensed title insurance company in California and is registered to  
22 do business in California.

23 18. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a Florida  
24 corporation with its principle place of business 601 Riverside Ave., Jacksonville, Florida 32204.  
25 TTICF does business in California, is a licensed title insurance company in California and is  
26 registered to do business in California.

27 19. Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri  
28 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida

1 32204. Chicago Title does business in California, is a licensed title insurance company in  
2 California and is registered to do business in California.

3 20. Defendant National Title Insurance of New York, Inc. ("NYINY") is a New York  
4 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida  
5 32204. NYINY does business in California, is a licensed title insurance company in California  
6 and is registered to do business in California.

7 21. Defendant Security Union Title Insurance Company Chicago Title Insurance  
8 Company ("Chicago Title") is a Missouri Corporation with its principle place of business at 601  
9 Riverside Ave., Jacksonville, Florida 32204. Chicago Title does business in California, is a  
10 licensed title insurance company in California and is registered to do business in California.

11 22. The Fidelity family of title insurance companies (collectively, "Fidelity") - which  
12 includes defendants Fidelity National, FNTIC, Tigor, TTICF, Chicago Title, NYINY and SUTIC,  
13 and their affiliates - is engaged in selling title insurance to purchasers of commercial and  
14 residential real estate throughout the United States, including California. Nationally, Fidelity  
15 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly  
16 \$4.6 billion. Fidelity, Chicago Title and Tigor were founding members of TIRSA (defined  
17 below) and since TIRSA's inception have charged title insurance rates in New York that TIRSA  
18 collectively sets.

19 23. The Fidelity family of title insurance companies and their affiliates are wholly-  
20 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,  
21 Fidelity National is a provider of title insurance, specialty insurance, and claims management  
22 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of  
23 title insurance companies engaged in the conduct challenged herein with the approval and assent  
24 of defendant Fidelity National.

25 24. Defendant The First American Corporation ("First American") is a California  
26 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. First  
27 American does business in California through one or more its subsidiaries, including but not  
28 limited to, defendant First American Title Insurance Company and United General Title

1 Insurance Company.

2 25. Defendant First American Title Insurance Company ("FATIC") is a California  
3 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. FATIC  
4 does business in California is a licensed title insurance company in California and is registered to  
5 do business in California.

6 26. Defendant United General Title Insurance Company ("UGTIC") is a Colorado  
7 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does  
8 business in California, is a licensed title insurance company in California and is registered to do  
9 business in California.

10 27. The First American family of title insurance companies (collectively, "First  
11 American") - which includes defendants First American, FATIC and UGTIC, and their affiliates  
12 - is engaged in selling title insurance to purchasers of commercial and residential real estate  
13 throughout the United States, including California. Nationally, First American accounts for  
14 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion.  
15 First American Title was a founding member of TIRSA and since TIRSA's inception has charged  
16 title insurance rates in New York that TIRSA collectively sets.

17 28. The First American family of title insurance companies and their affiliates are  
18 wholly-owned and controlled by defendant The First American Corporation. Through its  
19 subsidiaries, First American is a provider of title insurance, business information, and related  
20 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First  
21 American family of title insurance companies and their affiliates engaged in the conduct  
22 challenged herein with the approval and assent of defendant First American.

23 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia  
24 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does  
25 business in California through one or more of its subsidiaries, including but not limited to,  
26 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation  
27 and Trans-nation Title Insurance Company.

28 30. Defendant Commonwealth Land Title Insurance Company ("CLTIC") is a

1 Pennsylvania corporation with its principle place of business at 5600 Cox Road, Glen Allen,  
2 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in  
3 California and registered to do business in California.

4 31. Defendants Lawyers Title Insurance Corporation ("LTIC") is a Nebraska  
5 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
6 LTIC does business in California, is a licensed title insurance company in California and is  
7 registered to do business in California.

8 32. Defendants Trans-nation Title Insurance Corporation ("TNTIC") is a Nebraska  
9 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
10 TNTIC does business in California, is a licensed title insurance company in California and is  
11 registered to do business in California.

12 33. The LandAmerica family of title insurance companies (collectively,  
13 "LandAmerica") - which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their  
14 affiliates - is engaged in selling title insurance to purchasers of commercial and residential real  
15 estate throughout the United States, including California. Nationally, LandAmerica accounts for  
16 approximately 19 percent of title premiums, which in 2006 amount to roughly \$3.15 billion.  
17 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA's  
18 inception have charged title insurance rates in New York that TIRSA collectively sets.

19 34. The LandAmerica family of title insurance companies and their affiliates are  
20 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its  
21 subsidiaries, LandAmerica is a provider of title insurance and other products and services that  
22 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.  
23 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title  
24 insurance companies and their affiliates engaged in the conduct challenged herein with the  
25 approval of defendant LandAmerica.

26 35. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation  
27 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in  
28 California, is a licensed title insurance company in California and is registered to do business in

1 California.

2 36. Defendant Stewart Title Insurance Company ("STIC") is a New York corporation  
3 with its principle place of business at 300 E. 42nd St., Floor 10, New York, NY 10017. STIC  
4 does business in California, is a licensed title insurance company in California and is registered to  
5 do business in California.

6 37. The Stewart family of title insurance companies (collectively, "Steward") - which  
7 includes defendants STGC and STIC, and its affiliates - is engaged in selling title insurance to  
8 purchasers of commercial and residential real estate throughout the United States and California.  
9 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006  
10 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA's  
11 inception has charged title insurance rates in New York that TIRSA collectively sets.

12 38. Together, defendants account for more than 85 percent of title premiums  
13 consumers pay in California. Nationally, they account for more than 85 percent of title  
14 premiums, which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages  
15 period, defendants charged California consumers in California virtually identical title insurance  
16 rates.

17 **IV. OTHER ENTITIES**

18 39. TIRSA is a voluntary association of title insurers licensed as a rate service  
19 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains  
20 its offices in New York City, which until recently were located at the same New York address of  
21 Fidelity Title.

22 40. TIRSA annually compiles from its members statistical data relating to their title  
23 insurance premiums, losses and expenses and submits this information in aggregate form to the  
24 New York Insurance Department. TIRSA also prepares and submits the New York Title  
25 Insurance Rate Manual which sets forth title rates to be charged and rules to be followed by  
26 TIRSA's members. The Insurance Department has never objected to any of the rates TIRSA has  
27 collectively set. Similarly, the California OIC has not actually held a public hearing or conducted  
28 any other review or regulation of the title insurance rates in California for thirty years.



1           41.     TIRSA's membership is comprised of defendant insurers and all other title  
2 insurers that are licensed to issue policies in New York. Currently, Fidelity, First American,  
3 LandAmerica and Stewart collectively represent 14 of TIRSA's 22 members. As such, they  
4 comprise a majority voting block which, according to TIRSA's by-laws, allows them to control  
5 the operations of TIRSA and, in particular, TIRSA's collective rate setting activity.

6           42.     Various other persons, firms and corporations not made defendants herein have  
7 participated as co-conspirators with the defendants in the violations alleged herein and have  
8 performed acts and made statements in furtherance thereof.

9                                   V.     CLASS ACTION ALLEGATIONS

10          43.     Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the  
11 Federal Rules of Civil Procedure, on behalf of herself and a class consisting of all persons  
12 excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who  
13 purchased directly, from one or more of the defendants and/or their co-conspirators title  
14 insurance for residential and commercial property in California during the four year period  
15 preceding this lawsuit and who have sustained damages as a result of the conspiracy herein  
16 alleged. The number of potential class members is so numerous that joinder is impracticable.

17          44.     Plaintiff, as representative of the class, will fairly and adequately protect the  
18 interest of the class members. The interests of plaintiff are coincident with, and not antagonistic  
19 to, those of the class members.

20          45.     Except as to the amount of damages each member of the class has by itself  
21 sustained, all other questions of fact and law are common to the class, including but not limited  
22 to, the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman  
23 Act (15 U.S.C. §1) and the effects of such violation.

24          46.     Plaintiff, along with all other members of the Rule (b) (3) class, were injured as a  
25 result of paying supra-competitive prices for title insurance in California. The supra-competitive  
26 prices were achieved as a result of defendants' illegal price-fixing activities and market allocation  
27 and division.

28          47.     Members of the class include hundreds of thousands, if not millions, of



1 consumers. They are so numerous that their joinder would be impracticable.

2 48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal  
3 Rules of Civil Procedure, for violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule  
4 (b) (2) class includes all members of the (b) (3) class, and all consumers who are threatened with  
5 injury by the anticompetitive conduct detailed herein.

6 49. Defendants have acted, continued to act, refused to act and continued to refuse to  
7 act on grounds generally applicable to Rule (b) (2) class, thereby making appropriate final  
8 injunctive relief with respect to the Rule (b) (2) class as a whole.

9 50. Members of the Rule (b) (2) class include hundreds of thousands, if not millions,  
10 of consumers. They are so numerous that their joinder would be impracticable.

11 51. Common questions of law and fact exist with respect to all class members and  
12 predominate over any questions solely affecting individual class members. Among the questions  
13 of law of fact common to the class are the following:

- 14 • Whether defendants have engaged in the alleged illegal price-fixing activity and  
15 market allocation and division.
- 16 • The duration and scope of defendants' alleged illegal price-fixing and market  
17 allocation and division activity.
- 18 • Whether defendants' alleged illegal price-fixing and market allocation and  
19 division has caused higher prices to plaintiffs and other purchasers of title  
20 insurance in California.
- 21 • Whether the Insurance Commissioner has actively supervised defendants' price  
22 fixing and market allocation and division.

23 52. Plaintiff does not have any conflict of interest with other class members.  
24 Plaintiff's claims are typical of the claims of the class and they will fairly and adequately reflect  
25 the interests of the class. Counsel competent and experienced in federal class action and federal  
26 antitrust litigation has been retained to represent the class.

27 53. This action is superior to any other method for the fair and efficient adjudication  
28

1 of this legal dispute since joinder of all members is not only impracticable, but impossible. The  
2 damages suffered by certain members of the class are small in relation to the expense and burden  
3 of individual litigation and therefore it is highly impractical for such class members to seek  
4 redress for damages resulting from defendants' anticompetitive conduct.

5  
6 54. There will be no extraordinary difficulty in the management of the class action.

7  
8 **VI. TRADE AND COMMERCE**

9 55. During all or part of the period in suit, defendants and their co-conspirators were  
10 sellers of title insurance in California.

11 56. During the period in suit, the defendants sold substantial quantities of title  
12 insurance in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in  
13 the United States paid \$17 billion for residential title insurance policies.

14 57. During the period in suit, class members from locations outside California  
15 purchased commercial or residential property and title insurance within California.

16 58. During the period in suit, the defendants were the major sellers of title insurance  
17 in the United States and California. Defendants controlled in excess of 85 percent of the market  
18 for title insurance in the United States and California.

19 59. The activities of the defendants and their co-conspirators, as described herein,  
20 were within the flow of interstate commerce and substantially affected interstate commerce.

21 **VII. FACTUAL ALLEGATIONS**

22 **A. The Nature of Title Insurance**

23 60. Title insurance is one of most costly items associated with the closing of real  
24 estate transaction. In California, rates for title insurance are based on a percentage of the total  
25 value of the property being insured. For residential properties, this price ranged in 2005 from  
26 about \$1,010 (for a \$250,000.00 property) to \$1,490 (for a \$500,000.00 property). For more  
27 expensive homes and commercial properties, these prices are significantly higher. This amount  
28 spent on title insurance has risen dramatically over the past decade.

1           61. Title insurance serves an important purpose. It protects the purchaser of a  
2 property from any unidentified defects in the title that would in any way interfere with the full  
3 and complete ownership and use of the property with the ultimate right to resell the property.  
4 Title insurance is required by lenders in most residential and commercial real estate transactions.

5           62. Consumers exercise little discretion in choosing the title insurer from which they  
6 purchase the insurance. That decision is typically made for them by their lawyer, mortgage  
7 broker, lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not  
8 challenged. Most consumers do not even become aware of the price they will pay and to which  
9 insurer they will pay it until the actual closing of the real estate transaction. By then its too late,  
10 consumers can't attempt to negotiate a better title insurance price or alternate provider for fear of  
11 delaying or derailing the entire transaction. There is no shopping around. There is no negotiation  
12 of price.

13           63. This dynamic basically removes the sale of title insurance from the normal  
14 competitive process. Unlike the regular forces of supply and demand that keep most industries  
15 and their pricing in check, the title insurance industry is not subject to any real competitive  
16 constraints. The purchasers of the insurance, in most instances, are not the ones making the  
17 purchasing decisions. And, they are certainly in no position to question the price.

18           64. The most effective but illegal way for a particular title insurer to get business is to  
19 encourage those making the purchasing decisions - the real-estate middlemen - to steer business  
20 to that insurer. The best way to so motivate the middlemen is not through lower prices (that they  
21 are not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals,  
22 business services and other financial enticements. Therefore, it is through higher pricing (which  
23 allows for generous inducements and kick-backs), not lower pricing, which provides the best way  
24 for title insurers to compete and increase their business.

25           **B. Price-Fixing in the Large Markets**

26           65. New York is one of several states in which the leading title insurers collectively  
27 fix their prices through a rate-setting organization like TIRSA. There are two principal cost  
28 components that go into TIRSA's calculation. One comprises the risk associated with issuing the

1 title policy. The other comprises the "agency commissions" paid to title agents.

2 66. The risk components cover the risk the title insurer bears for any undiscovered  
3 defects in the title. Unlike property insurance, title insurance carriers with it a very limited risk  
4 of loss to the insurer. That is because title insurance protects against unknown prior events that  
5 cause defects in title. With a proper search and examination of prior ownership records, any such  
6 defects can and almost always are readily identified and excluded from the policy's coverage.  
7 Consequently, the average claim on a title insurance policy in the United States amounts to only  
8 about 5 percent of the total premium collected. This is very different from property coverage  
9 (such as auto and home insurance) - which protects against future occurrences over the insurer  
10 has little or no control - where the average claim payout amounts to about 80 percent of the total  
11 premium.

12 67. The "agency commissions" component of the title insurance rate covers payments  
13 made to title agents. Defendants have an ownership or management stake in many of the title  
14 agencies to which these payments are made. A small portion of these payments is for the search  
15 and exam of prior ownership records of the property being purchased to identify any liens,  
16 encumbrances, burdens, exclusions, or other defects in the title. The search and exam function  
17 does not involve the spreading or underwriting of risk, and title insurers typically outsource this  
18 task to title agents.

19 68. The remainder, and by far the bulk, of the agency commission are comprised of  
20 costs unrelated to the issuance of title insurance. These costs include kickbacks and other  
21 financial inducements title insurers provide to title agents and indirectly (through title agents) to  
22 the lawyers, brokers, and lenders who, in realty, are the ones deciding which title insurer to use.  
23 These payments have nothing to do with the issuance of title insurance and are made by title  
24 insurers merely to inflate their revenues and steer business their way.

25 69. Under TIRSA's collective rate setting regime, roughly 85 percent of the total tile  
26 insurance premium is based on the so-called "costs" associated with the payment of agency  
27 commissions. Only 15 percent is based on costs associated with the risk of loss.

28 70. TIRSA publishes its final calculated title rates in the New York Title Insurance

1 Rate Manual. These rates are tied to the value of the property being insured. This is so despite  
2 the fact that the costs associated with agency commissions are entirely unrelated to the value of  
3 the property. Indeed, agency kickbacks and enticements have little to do with producing a  
4 particular title policy and provide no value - proportional to property value. The instead depend  
5 on the age of the property, the complexity of the ownership history, and the accessibility of prior  
6 ownership records.

7 71. There are other states in which the defendants overly meet and agree to fix the  
8 rates for title insurance as part of a formal collective rate setting process.

9 **C. TIRSA's Formation**

10 72. Prior to TIRSA, the New York Board of Underwriters ("NYBTU") served as the  
11 title insurance rate-setting body in New York. NYBTU, along with the title insurance rate setting  
12 bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal Trade  
13 Commission ("FTC") challenge to the collective rate setting activity of many of these  
14 associations. The FTC's challenge culminated in *FTC v. Ticor Title Inc. Co.*, 504 U.S. 621  
15 (1992), where the Supreme Court held that to avoid *per se* illegal price fixing, the rate setting  
16 activity of these rating bureaus must be actively supervised by the state.

17 73. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC  
18 contended that the respective state insurance departments merely rubber-stamped this portion of  
19 the collectively fixed rates without any independent review or analysis of their reasonableness or  
20 costs justification. The Supreme Court agreed with the FTC that this kind of limited state  
21 oversight was not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance  
22 department has to "exercise sufficient independent judgment and control so that the details of the  
23 rates or prices have been established as a product of deliberate state intervention, not simply by  
24 agreement among private parties." *Ticor*, 504 U.S. at 634-35.

25 74. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand  
26 in *Ticor Title Ins. Co. v. FTC*, 998 F.2D 1129 (3d Cir. 1992), upheld the FTC's finding that the  
27 collective rate-setting of certain state rating bureaus was improper because it was not actively  
28 supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed



1 us that a state's rubber stamp is not enough. Active supervision requires the state regulatory  
2 authorities' independent review and approval". *Id.* at 1139.

3 75. Defendants formulated TIRSA's first rate manual and procedure soon after the  
4 Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme  
5 to get around the rigors of state oversight required by *Ticor*. They have done so by calculating a  
6 single rate that comprises both risk and agency commission costs and by outsourcing to title  
7 agents the agency commission costs. In this way, defendants avoid providing the Insurance  
8 Department with any detailed breakout or backup for the bulk of the costs that make up their  
9 collectively fixed rates.

10 76. TIRSA merely submits an aggregated figure that is supposed to represent the total  
11 agency commission costs. Embedded within this figure is the vast quantity of dollars that are  
12 funneled to and through the title agencies as kickbacks, financial inducements and other costs  
13 unrelated to the issuance of title insurance. Defendants' design in all of this has been to effective  
14 "hide" the costs basis for their artificially high and collectively fixed title insurance premiums  
15 form the regulatory scrutiny that *Ticor* demands.

16 **D. Lack of Regulatory Supervision and Authority in New York and Other States**  
17 **Including California**

18 77. There is no provision under the New York Insurance Law for TIRSA to include in  
19 its collectively fixed rates kickbacks and other agency commission payments unrelated to the  
20 issuance of title insurance. Indeed, the New York Insurance Department has openly  
21 acknowledged that it lacks the authority to review any agency commission payments. It has  
22 likewise recognized that defendants' outsourcing of agency commission costs has prevented it  
23 from performing a meaningful review of TIRSA's calculated rates. This was made clear at a  
24 November 2006 public hearing at New York Insurance Department held - the first in 15 years -  
25 where it questioned TIRSA and its members on TIRSA's failure to provide the Insurance  
26 Department with any backup or detail for agency commissions.

27 78. At the hearing, the Insurance Department conceded that is could not properly  
28 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed costs



1 information on agency commissions that TIRSA does not provide.

2 79. The Insurance Department's recognition that it is not properly supervising  
3 TIRSA's rate-setting activity is consistent with the April 2007 findings of the U.S. Government  
4 Accountability Office ("GAO") that the title insurance industry is in need of greater state  
5 regulation. The GAO studied the industry conditions of several states, including New York, and  
6 concluded that "state regulators have not collected the type of data, *primarily on title agents'*  
7 *costs and operations*, needed to analyze premium prices and underlying costs." (Emphasis  
8 added.)

9 80. Unchecked by regulatory review and insulated from competition, defendants have  
10 thus been unable to collectively fix title insurance rates at supra competitive levels and ear profits  
11 that vastly exceed those contemplated by the Insurance Department or that would have resulted in  
12 a free and open competitive market.

13 81. At the time of TIRSA's formation, the Insurance Department established 5 percent  
14 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance  
15 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its  
16 revenue and cost formation, to ensure that this 5 percent profit level is maintained and based on a  
17 reasonable premium. However, without the authority or ability to scrutinize agency commission  
18 costs, the Insurance Department has been unable to perform this function. As a result, defendants  
19 (through TIRSA) have been able to set artificially high title premiums and secure title profits far  
20 in excess of the 5 percent threshold.

21 82. Through an independent investigation conducted over the past several years, the  
22 New York State Attorney General found that for every dollar of insurance premium defendants  
23 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is  
24 paid out of claims. And, of the roughly 85 cents that supposedly covers agency commissions,  
25 only between 8 and 11 cents goes to costs actually incurred by title agents in producing the title  
26 policy. These numbers show that title insurers' collectively fixed rates have resulted in profits  
27 that vastly exceed the costs of producing such policies.

28 83. The New York Attorney General's investigation further revealed that what were

1 largely driving these numbers were the kickbacks and other financial inducements defendants  
2 were funneling to and through title agents to secure more business. As reported at the New York  
3 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it  
4 spent more than \$1 million of these so-called "agency commissions" on items identified at  
5 "Christmas", "automobile expenses", "political contributions", "promotional expenses", and  
6 "travel and entertainment". These expenses are not even remotely related to the issuance of title  
7 insurance.

8 84. The Washington State Insurance Commissioner's October 2006 report found  
9 strikingly similarly abuses in Washington. Violations were pervasive and the Commissioner  
10 concluded that consumers were paying too much as a result.

11 85. All of this "excess money" paid to title agents not only works to steer business to  
12 defendants. It also served to boost defendants' own profits through the inflated revenues they  
13 obtain to cover these agency payments and through their ownership or management stake in  
14 many of these agencies.

15 86. Defendants are competitors in the sale of title insurance to consumers throughout  
16 the United States. These title insurers have agreed and engaged in concerted efforts to (i)  
17 collectively set and charge uniform and supra competitive rates for title insurance, (ii) include in  
18 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,  
19 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these  
20 supposed "costs" from regulatory scrutiny by funneling them to and through title agents over  
21 which the government agencies have no ability or authority to regulate.

22 87. The GAO in its 2007 report entitled "actions Needed to Improve Oversight of the  
23 Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of  
24 competitions and questions about the reasonableness of prices including:

- 25 • Consumers find it difficult to shop for title insurance, therefore, they put little  
26 pressure on insurers and agents to compete based on price;  
27 • Title agents do not market to consumers, who pay for title insurance, but to those  
28 in the position to refer consumers to particular title agents, thus creating potential

1 conflicts of interest;

- 2 • A number of recent investigations by HUD and state regulatory officials have  
3 identified instances of alleged illegal activities with the title industry that appear to  
4 reduce price competition and could indicate excessive prices;
- 5 • As property values or loan amounts increase, prices paid for title insurance by  
6 consumers appear to increase faster than insurers' and agents' costs; and
- 7 • In states where agents' search and examination services are not included in the  
8 premium paid by consumers, it is not clear that additional amounts paid to title  
9 agents are fully supported by underlying costs.

10 88. The GAO visited several states including California, and found a lack of  
11 regulatory oversight:

12  
13 In the states we visited, we found that regulators did not assess title  
14 agents' costs to determine whether they were in line with premium rates; had  
15 made only limited efforts to oversee title agents (including ABAs involving  
16 insurers and agents); and, until recently, had taken few actions against alleged  
17 violations of anti-kickback laws. In part, this situation has resulted from a lack  
18 of resources and limited coordination among different regulators within states.  
19 On the federal level, authority for alleged violations of section 8 of RESPA,  
20 including those involving increasingly complex ABAs, is limited to seeking  
21 injunctive relief. Some state regulators expressed frustration with HUD's level  
22 of responsiveness to their requests for help with enforcement, and some  
23 industry officials said that RESPA rules regarding ABAs and referral fees need  
24 to be clarified. Industry and government stakeholders have proposed several  
25 regulatory changes, including RESPA reform, strengthened regulation of  
26 agents, a competitor right of action with no monetary penalty, and alternative  
27 title insurance models. [*Id.* at 41, footnotes omitted.]

21 **E. Competition Based on Kickbacks and Inducements But Not Rates**

22 89. Having agreed to fix or stabilize prices in New York and other states where they  
23 overtly meet to promulgate rates, these same defendants then set out to do the same in other  
24 states.

25 90. In other words, as a direct result of these meetings where rates were agreed to,  
26 these same defendants agreed, either expressly or tacitly, to not compete on rates in other states as  
27 well. To compete on rates in other states could and would imperil their ability to maintain the  
28

1 agreed rate in states like New York.

2 91. As is the case in New York, a lack of regulatory authority over rates created an  
3 environment in which a conspiracy can and did succeed. No agency was examining why all the  
4 rates were virtually identical, and no agency was examining whether the costs associated with  
5 these premiums were reasonable. This is an environment which is conducive to price fixing,

6 92. In California, there is a lack of regulatory authority and oversight over title  
7 insurance companies. The rates in California are not set as part of a deliberate state intervention  
8 and the state does not and cannot meaningfully renew or approve these rates. The rates at issue  
9 in this case went into effect without review.

10 **F. Other Indicators of a Lack of Competition and Conditions Conducive to**  
11 **Collusive Rate Setting**

12 93. In addition to the uniformity of rates, other facts suggest that it is more plausible  
13 than not that rates have been set based on an agreement to fix prices.

14 94. In theory, the chain of title should be documented back to its historic grant of  
15 ownership centuries in the past. Fear about a possible title defect in the distant past is widely  
16 used as a justification by title agencies when convincing property buyers to purchase an owner  
17 policy in addition to the lender policy, which is mandatory to secure a mortgage. The title  
18 agency, however, saves much time and money when the search is limited to one or two  
19 transactions. They rely on the insurance policy to cover the remote chance of missing an earlier  
20 but still-valid claim. If such a claim is asserted and survives the scrutiny of the title insurance  
21 company's legal department, the expected costs of compensation is likely to be less than the sum  
22 of added overhead costs of routinely tracing back every chain of title to the earliest registered  
23 owner in the distant past.

24 95. Title insurance industry officials tend to justify the large proportion of the  
25 premium retained by the title abstract and settlement agency (from 60 to more than 90 percent)  
26 by the alleged high costs of title searching back into the distant past. If fact, a high proportion of  
27 noncommercial properties are searched only through the most recent transaction. No information  
28 is available as to what proportions of claims originate in the distant past. The industry has never

1 published pertinent statistics. It would have a marketing incentive to publish these statistics if the  
2 risk were significant; that is has not published these statistics indicates that the risk probably is  
3 only slightly greater than zero.

4 96. Many U.S. homes are being resold three or four times in twenty-five years. At  
5 each of these occasions, an abstract of title will be prepared on the basis of a more or less than  
6 thorough review of the available title records, inheritance records, family records and records of  
7 past or current liens against a property. It is reasonable, therefore, to suspect that the risk of a  
8 title defect will decrease every time a property is sold.

9 97. Title searches have become less labor intensive, especially in large urban counties  
10 and cities. More and more of the information is available online. The statistical likelihood that a  
11 title default would be overlooked is a closely held industry secret, but it appears to be so small  
12 that many transactions that occurred during the last twenty-five to thirty-five years. The evidence  
13 is strong that the title insurance industry has achieved a remarkable high level of loss  
14 minimization.

15 98. Thus the costs of production have decreased as has the risk of loss yet none of  
16 these factors has resulted in price competition at the consumer level.

17 99. There is a remarkable absence of rate changes by title insurers over the past five  
18 years, despite the declining costs of production, increased number of transactions and increased  
19 revenue per transaction. During a period when costs per unit of production declined  
20 significantly, underwritten title companies and title insurers maintained excessive rates. The  
21 prices charged by title insurers and underwritten title companies were not and are not responsive  
22 to the changing costs of production or increasing revenue per transaction at a given set of rates.  
23 Again, this is indicia of an agreement not to compete based on price.

24 100. As noted, the title companies engage in illegal rebates and kickbacks where the  
25 title insurer or the underwritten title company provides money, free services or other things of  
26 value to a real estate agent, a lender or homebuilder in exchange for business referrals. These  
27 illegal rebates and kickbacks - a consequence of reverse competition - show that title insurance  
28 rates are supra competitive and that some portion of the overcharge is passed from the



1 underwritten title company or title insurer to the referrer of business.

2 101. A lack of competition and the ability to control prices is enhanced by the fact that  
3 there were few title insurer entrants over the period from 1995 through 2005 and the number of  
4 title insurer groups declined as title insurers acquired other title insurers. There were few  
5 underwritten title company entrants over the 2000 to 2005 period and new entrants were  
6 controlled business arrangements whose addition to the market did not result in greater price  
7 competition.

8 102. Access to title plants can be a barrier to entry, but the large barrier to entry exists  
9 due to the established relationships between the entities that can steer the consumer's title and  
10 escrow business and the entities who sell title insurance and escrow services.

11 103. The title insurance market is highly concentrated - a few title insurers account for  
12 the vast majority of title insurance sales - at both the statewide level and at the county level in  
13 California. For example, three title insurer groups account for 77.4% of the market at a statewide  
14 level. At the county level, each individual market was highly concentrated. The GAO found that  
15 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the  
16 ability of companies to fix prices.

17 104. The agreement not to compete based on price is also evidenced by the fact that no  
18 company has marketed its services to consumers, the ultimate purchasers of the product. This is  
19 in marked contrast to real insurance, for example, car insurance, where companies compete  
20 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor" or  
21 Allstate's "good hands" or the cute (to some) GEICO gecko promising low prices.

22 **VIII. CLAIMS FOR RELIEF**

23 **COUNT I**

24 **Violation of the Sherman Act**

25 105. Plaintiff incorporates by reference the preceding allegations.

26 106. Beginning at least as early as February 2004, and continuing thereafter to the  
27 present, the exact dates being unknown to plaintiff, defendants and their co-conspirators engaged  
28 in a combination of conspiracy in unreasonable restraint of the aforesaid interstate trade and



1 commerce in violation of Section 1 of the Sherman Act.

2 107. The aforesaid combination and conspiracy has consisted of a continuing  
3 agreement, understanding and concert of action among the defendants and their co-conspirators,  
4 the substantial terms of which have been:

5 (a) to fix, raise, maintain and stabilize the price of title insurance throughout  
6 California;

7 (b) to fix, raise, maintain and stabilize the terms and conditions of the sale of  
8 title insurance throughout California; and

9 (c) to allocate and divide the market for title insurance in California.

10 108. In the absence of proper regulatory authority and oversight, defendants' conduct  
11 constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to  
12 allocated and divides the title insurance market in California and is *per se* violation of section I of  
13 the Sherman Act

14 109. Defendants' price-fixing, market allocation and division activity has been  
15 continuous throughout the relevant damages period and has been renewed and reinforced  
16 annually through submissions to the OIC of supposed costs and revenue information and its  
17 periodic submissions of rate changes.

18 110. Through their collective price-fixing, market allocation and division and  
19 manipulation of the regulatory process, defendants have harmed competition by charging  
20 consumers supra competitive prices for title insurance in California, evidenced in part by the fact  
21 that the prices are uniformly higher than compared with the cost of providing the insurance.

22 111. The aforesaid combination and conspiracy has had the following effects among  
23 others:

24 (a) price competition in the sale of title insurance has been suppressed,  
25 restrained and eliminated;

26 (b) prices for title insurance have been raised, fixed, maintained and stabilized  
27 at artificially high and non-competitive levels; and

28 (c) purchasers of title insurance have been deprived of the benefit of free and

1 open competition.

2 112. During the period of the antitrust violation by defendants and their co-  
3 conspirators, plaintiff and each member of the class she represents, has purchased title insurance  
4 and, by reason of the antitrust violations herein alleged, paid more for such that it would have  
5 paid in the absence of said antitrust violations. As a result, plaintiff and each member of the class  
6 she represents, has been injured and damaged in an amount presently undetermined.

7 **COUNT II**

8 **Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.***

9 113. Plaintiff incorporates by reference the preceding allegations.

10 114. Defendants conduct as set forth above is in violation of the Cartwright Act of  
11 California (Cal. Bus. and Prof. Code §§ 16720, *et seq.*)

12 115. As a direct result of defendants' unlawful acts plaintiffs have paid artificially  
13 inflated prices for title insurance and have suffered injury to their business and property.

14 **COUNT III**

15 **(Cal. Bus. and Prof. Code §§ 17200, *et seq.*)**

16 116. The preceding paragraphs of this Complaint are realigned and incorporated by  
17 reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§  
18 17200, *et seq.*, on behalf of herself and the members of the class.

19 117. Defendants' statements and representations constitute unfair, unlawful and  
20 deceptive trade practices in violation of the UCL.

21 118. All of the wrongful conduct alleged herein occurs and continues to occur in the  
22 conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or  
23 generalized course of conduct that is repeated in the State of California on hundreds, if not  
24 thousands, of occasions daily.

25 119. Plaintiff has suffered injury in fact and has lost money or property as a result of  
26 defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title  
27 insurance than she would or should have absent the conduct complained of.

28 120. Plaintiff requests that this court enter such orders or judgment as may be necessary

1 to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to  
2 restore to any person in interest any money which may have been acquired by means of such  
3 unfair competition and to disgorge any profits realized by defendants as a result of its unfair,  
4 unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ.  
5 Code § 3345, and for such other relief as set forth in the Prayer for Relief.

6 **COUNT IV**

7 **UNJUST ENRICHMENT**

8 121. Plaintiff incorporates by reference the preceding allegations.

9 122. This Cause of action is pled in the alternative to all claims and/or causes of action  
10 at law.

11 123. Defendant has received a benefit from plaintiff and the class members in the form  
12 of the prices plaintiff and the class members paid for defendants' title insurance.

13 124. Defendants are aware of their receipt of the above-described benefit.

14 125. Defendants received the above-described benefit to the detriment of plaintiff and  
15 each of the other members of the class.

16 126. Defendants continue to retain the above-described benefit to the detriment of  
17 plaintiff and the class members.

18 127. As a result of defendants' unjust enrichment, plaintiff and the class members have  
19 sustained damages in an amount to be determined at trial and seek full disgorgement and  
20 restitution of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the  
21 unlawful or wrongful conduct alleged above.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE, plaintiff demands:**

24 A. That the alleged combination and conspiracy among the defendants and their co-  
25 conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of  
26 Section 1 of the Sherman Act;

27 B. That the court declares the premiums charged are excessive under state law and  
28 order damages;

1 C. That judgment be entered against defendants, jointly and severally, and in favor of  
2 plaintiff, and each member of the class it represents, for threefold the damages determined to  
3 have been sustained by plaintiff; and each member of the class it represents, together with the  
4 cost of suit, including a reasonable attorneys' fee;

5 D. Each of the defendants, successors, assignees, subsidiaries and transferees, and  
6 their respective officers, directors, agents and employees, and all other persons acting or claiming  
7 to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from in  
8 any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid  
9 combination, conspiracy, agreement, understanding or concert of action, adopting or following  
10 any practice, plan, program, or design having a similar purpose or effect in restraining  
11 competition; and

12 E. Such other and further relief as may appear necessary and appropriate.

13 **JURY TRIAL DEMANDED**

14 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged  
15 herein.

16  
17  
18  
19  
20 Date: April 8, 2008

Respectfully submitted,

21  
22  
23 By: 

24 DONALD AMAMGBO  
25 REGINALD TERRELL  
26 Attorneys for Plaintiffs  
27  
28